

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re AIDEN O., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

JORGE O.,

Defendant and Appellant.

D055479, D056346

(Super. Ct. No. SJ12165)

APPEAL from orders of the Superior Court of San Diego County, Garry G.

Haehnle, Judge. Affirmed.

In these consolidated proceedings, Jorge O. appeals jurisdictional and dispositional orders declaring his child, Aiden O., a dependent child of the juvenile court, denying his request for discovery and denying him reunification services. He contends the evidence was insufficient to support the jurisdictional finding under Welfare and

Institutions Code<sup>1</sup> section 300, subdivision (e); the court erred by denying his request for discovery; the evidence was insufficient to support removal from his custody; and the court erred by denying him reunification services and abused its discretion by granting the district attorney (DA) access to records of the juvenile dependency proceedings. We affirm the orders.

### FACTUAL AND PROCEDURAL BACKGROUND

On April 28, 2009, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of two-month-old Aiden under section 300, subdivision (e), alleging he had suffered severe physical abuse, including multiple fractures of his ribs, arm and toes that Jorge had inflicted, and Aiden's mother, Melissa O., should have known Jorge was physically abusing Aiden because she knew Jorge has an anger problem and was frustrated by Aiden's crying.

Jorge and Melissa had taken Aiden to a hospital on April 23. They said that on the day before, while they were with friends in their apartment in Tijuana, Jorge went into the bedroom with Aiden and was alone with him for a time. Jorge said he put Aiden's hand on the turntable of his disc jockey equipment to take a picture, and Aiden cried loudly afterward. Later that night, Aiden cried persistently, and Melissa noticed his arm was limp. The next day the family returned to the home in San Diego they shared with maternal relatives. When the maternal grandmother saw Aiden, she insisted Melissa take

---

<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

him to an emergency room. Testing showed multiple bone fractures at different stages of healing consistent with nonaccidental trauma.

Melissa told police she and Jorge sometimes argued and pushed each other or grabbed each other's arms. She said Jorge works at night and had been frustrated by Aiden's crying and keeping him awake during the day. Jorge admitted he sometimes grabbed Melissa's arm during arguments and that Aiden's crying frustrated him. He became tearful and disclosed to police that he had shaken Aiden. He said, "I think I broke the hand. I love my baby." He said when Aiden was crying he grabbed him by his arms and heard a pop. He did not tell Melissa. He said he played rough with Aiden, and he hurt him because he was frustrated and stressed. He showed how he sometimes tossed Aiden in the air. He said when Aiden cried he decided to hurt him, and one time when Aiden was crying, he put him in his swing at the highest setting, but did not strap him in. Aiden fell out. Jorge said he knew Aiden had hurt his foot, but he did nothing about it. Jorge was arrested and charged with willful cruelty to a child.

Melissa acknowledged Jorge was sometimes frustrated and said he had once punched a hole in a wall. She said he had been happy about her pregnancy, but became distant after Aiden was born. She said she believed Jorge had injured Aiden and she was divorcing him. She began participating in services.

Jorge subsequently recanted his earlier admissions to police and stated neither he nor Melissa knew how Aiden had been injured. He said he was never frustrated when he cared for Aiden.

At the jurisdictional hearing, after considering the evidence and argument, the court found the allegations of the petition to be true.

At the dispositional hearing, the psychologist who had performed Jorge's psychological evaluation testified as an expert in evaluating whether a person had the ability to successfully reunify with a child within six months. She opined Jorge would be able to participate in reunification services. She discounted the admissions he had made to police and said the most likely explanation for Aiden's injuries were "inappropriate supervision, lack of -- careless, childlike behaviors -- awareness of the fragility of the baby."

The social worker said, taking into account Jorge's admissions and the fact he did not show remorse or empathy and did not seek medical attention for Aiden, that providing services to Jorge would not prevent him from abusing Aiden again. She said Jorge had not indicated he truly wanted to participate in services, had not returned the prison packets she had sent him and had not contacted her.

At the close of testimony and argument, the court declared Aiden a dependent child of the court, ordered him placed with Melissa on the condition she reside with the maternal grandmother, ordered family maintenance services for Melissa, denied services for Jorge and ordered Jorge have no contact with Aiden.

## DISCUSSION

### I

Jorge contends the evidence was insufficient to support the jurisdictional finding under section 300, subdivision (e), because there was no evidence to show he was

malicious or intended to abuse Aiden or cause severe injury. He argues he was only negligent, and, at the time of the jurisdictional hearing, he was incarcerated and Melissa was capable of protecting Aiden until Jorge obtained better parenting skills.

A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also ' . . . view the record in the light most favorable to the orders of the juvenile court.' " (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

Substantial evidence supports the court's finding under section 300, subdivision (e). Section 300, subdivision (e), provides a child comes within juvenile court jurisdiction if the court finds the child was under the age of five and suffered severe physical abuse by a parent. For the purpose of the subdivision, "severe physical abuse" includes:

"[A]ny single act of abuse which causes physical trauma of sufficient severity that, if left untreated would cause permanent physical disfigurement, permanent physical disability, or death; . . . or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture or unconsciousness . . . ."

The petition filed on Aiden's behalf stated:

" . . . [T]he child, who was under the age of five years, suffered severe physical abuse, including: multiple anterior and posterior rib fractures of varying ages, irregularity of the distal tibial metaphysic bilaterally, healing fractures of the proximal first metatarsal

bilaterally as well as a healing fracture of the left proximal second metatarsal, an acute, mildly displaced fracture of the distal right humerus[,] healing fracture of the right radius and healing corner fractures of the distal ulna metaphysic[,] which are considered non-accidental, inflicted by his father, and the mother knew the father was frustrated by the child's crying, has a problem with anger and reasonably should have known the father was physically abusing the child, and the child is in need of the protection of the Juvenile Court."

Substantial evidence supports the court's finding under section 300, subdivision (e). The evidence fully supports finding Jorge had inflicted multiple bone fractures on separate occasions on two-month-old Aiden. Jorge admitted to police he had caused fractures on each of the areas of Aiden's body described in the petition. The fact that his interview was translated by a Spanish speaking law enforcement officer indicates the statements were reliable.

Jorge's argument his actions were simply negligent is unfounded. The medical evidence was consistent with nonaccidental trauma, not negligence. The juvenile court, in finding the allegations true, found Jorge's admissions to police were truthful and his later recantations were false. Jorge's argument there was no evidence he was malicious or that he intended to abuse Aiden or cause severe physical injury is also misplaced. Section 300, subdivision (e), does not include a requirement that the infliction of injury be intentional. We also reject his argument that juvenile court jurisdiction was not necessary because he was incarcerated, and Melissa was able to protect Aiden. Melissa had been aware of Jorge's frustrations with Aiden's crying and knew he had been violent in the past, but she did not protect Aiden from him. The evidence showed the juvenile court's involvement was necessary for Aiden's protection. Further, Jorge has forfeited his

right to raise on appeal his claims that the police pressured him and used leading questions by not objecting to the admission of his statements in the police reports. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Substantial evidence supports the court's finding of jurisdiction under section 300, subdivision (e).

## II

Jorge asserts the court erred by denying his request for discovery of a videotape of his interview with police. He states he had a right to see the videotape because the Agency did not disclose that the social worker had viewed and considered it. He argues the court should have granted a mistrial or a continuance to allow his trial counsel time to review the videotape and prepare an adequate defense.

Under California Rules of Court, rule (rule) 5.546(a) and The Superior Court of San Diego County, Local Rules, rule, (local rule) 6.1.7(A), prehearing discovery in dependency matters is to be conducted informally. Relevant material must be timely disclosed to all parties except as protected by statute, claim of privilege or other good cause. (Rule 5.546(a); local rule 6.1.7(A).) Rule 5.546(b) states the petitioner must make accessible to the child, the parents or their counsel any police, arrest or crime reports relating to the dependency matter. Upon request, the petitioner must make accessible relevant records of statements, admissions, or conversations by the parent or physical evidence relating to the matter unless the information is privileged or other good cause not to disclose is shown. (Rule 5.546(d)(2), (d)(7), (g), & (h).) The Agency has a continuing duty to disclose favorable material. (Rule 5.546(k).) If a party does not

disclose requested materials, the requesting party may move the court for an order requiring disclosure. (Local rule 6.1.7(B).)

The court did not err by denying the request for a mistrial or a continuance. The rules distinguish between reports and records. Although the Agency had an affirmative duty to disclose police reports, it was obligated to disclose the record of a statement only upon a timely request. (Rule 5.546(b) & (d).) The police report indicated Jorge's interview with police had been videotaped, but the record does not show Jorge requested the videotape when he first should have been aware of its existence in May, but, instead, that he waited until the third day of the dispositional hearing in October. Jorge has not shown error by the court not declaring a mistrial or delaying the hearing.

In addition, Jorge does not show how he was prejudiced by not viewing the videotape. By the time of his request during the dispositional hearing, the court had already found true the allegations he had inflicted numerous severe injuries on Aiden. This finding formed the basis for the issues for disposition, whether Aiden should be removed and whether Jorge should be offered services. Jorge has not shown error.

### III

Jorge maintains insufficient evidence was offered to support removing custody from him and, instead, substantial evidence supported keeping the family intact with family maintenance services.

Section 361, subdivision (c)(1), provides a child may not be taken from the custody of his or her parents unless the juvenile court finds by clear and convincing evidence:



"There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent . . . with whom the minor resided at the time of injury. The court shall consider, as a reasonable means of protecting the minor, the option of removing an offending parent . . . from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent . . . to retain physical custody as long as that parent . . . presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm."

"The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.) Dispositional orders are reviewed under the standard of whether they are supported by substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.)

Viewing the evidence in support of the orders, substantial evidence supports removing Aiden from Jorge's custody. Jorge admitted to police that he had inflicted severe injuries on Aiden and that he was frustrated and angry and did not seek medical help for the injuries. Further, he expressed no remorse for the terrible harm he had inflicted, did not inquire about Aiden's well-being, and did not contact the social worker or complete the parenting packet she sent him. Substantial evidence supports the removal order.

#### IV

Jorge next asserts the court erred by denying him reunification services. He argues providing him with services would prevent further abuse, and he would be able to make substantial progress within six months even while incarcerated. He maintains the psychologist who evaluated him considered him a good candidate for a relatively brief intervention, and he was willing to comply with reunification requirements and would benefit from child development and parenting classes.

Section 361.5, subdivision (b)(5), states reunification services need not be provided when the court finds by clear and convincing evidence "[t]hat the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian."

Section 361.5, subdivision (c) provides in part:

"In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. . . . [¶] . . . [¶]

"[T]he court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child."

The parent bears the burden of showing that services would likely prevent reabuse. The determination is reviewed under the substantial evidence standard of review. (*Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 163-164.)

Jorge has not shown error by the court denying him reunification services. The court found it would not be detrimental to Aiden to deny services to Jorge because Aiden was not closely and positively attached to Jorge; Jorge had severely injured Aiden during Aiden's first two months of life and since that time had spent no time with him. The court considered the testimony of the social worker and of the psychologist who evaluated Jorge and determined Jorge had taken no responsibility for injuring Aiden, and he lacked insight regarding how he had hurt Aiden. It noted Jorge said he had been jealous of Aiden, intentionally hurt him when he cried, broke his bones several times and did not tell Melissa or seek any medical help. The court commented that when Jorge talked with police, he did not appear concerned about Aiden, but only about losing Melissa and his job, and he never called the social worker to ask about Aiden's well-being. The psychologist's opinion that Jorge could benefit from services within a relatively short period of time was only one factor for the court to consider along with Jorge's past violent behavior, his admissions and his lack of insight, remorse and concern about Aiden. Substantial evidence supports denial of services.

## V

Jorge finally asserts the court abused its discretion by granting the DA access to the court's records of the dependency proceedings. He argues the court's protective order

did not show the court had performed the required balancing test or specify the records to be released.

Section 827, rule 5.552 and local rule 6.1.7 provide procedures for nonparties to seek information in juvenile court files. Section 827, subdivision (a)(1)(B) and (a)(5) and rule 5.552(b)(1)(B), state the DA is one of the agencies with the right to inspect juvenile court documents without a juvenile court order. Before releasing a copy of the file the Agency is required to redact privileged and confidential information. (§ 827, subd. (a)(3)(A).) A party to the action must be provided with due process, including notice and an opportunity to object to the release of the records or report. (§ 827, subd. (a)(3)(B).)

Under these requirements, the DA was not required to seek a court order to obtain a copy of the file. Nevertheless, the DA filed a request for a court order for the file. The court indicated good cause had been shown for release of the file, but it must balance the interests of the applicant, the child, the other parties and the public before releasing it. Jorge objected to the request, arguing it contained sensitive material and could result in inadvertent disclosure to law enforcement. At a hearing, the court granted the DA's motion and said it would conduct an in-camera review and that discoverable documents would be provided upon execution of the protective order. The judge and counsel for all parties signed the protective order. The court then ordered release of the discoverable documents, demarcated by paper clips, in the file.

Jorge received notice and the opportunity to make his objections to the release of the file. He failed to show the court did not adequately consider his objections. He has not shown error.

DISPOSITION

The orders are affirmed.

---

O'ROURKE, J.

WE CONCUR:

---

NARES, Acting P. J.

---

McINTYRE, J.